



May 1, 2002

Mr. Lowell M. Stokes
Acting General Counsel
El Paso Water Utilities Public Service Board
P.O. Box 511
El Paso, Texas 79916-0001

OR2002-2272

Dear Mr. Stokes:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 162179.

The El Paso Water Utilities Public Service Board (the "board") received a request for the following:

1. Any purchase document, option agreement, letter of intent, letter of commitment, contract, agreement, correspondence, or similar documents, relating to any and all transactions between C-L Ranch, L.P., Jack and/or Mike Lynch, either individually or doing business as the C-L Ranch, L.P., and the [board], for the period 1/1/98 to the present date.
2. Any minutes of the [board] showing consideration, discussion, or action on the above.

You claim that the requested information is excepted from disclosure under sections 552.101, 552.105, and 552.131 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We note that you notified the interested third parties of this request for information and of their right to submit arguments to this office as to why the requested information should not be released.¹ Section 552.305(d) allows a third party ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information

¹See Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under Gov't Code ch. 552 in certain circumstances).

relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, this office has received no correspondence from either Mr. Mike Lynch or Mr. Jack Lynch. Thus, neither third party has demonstrated that any of the requested information must be withheld from public disclosure. *See* Gov't Code § 552.110(a)-(b); Open Records Decision Nos. 552 at 5 (1990) (attorney general will grant exception to disclosure under statutory predecessor to Gov't Code § 552.110(a) if governmental body takes no position, third party makes *prima facie* case that information qualifies as trade secret under section 757 of Restatement of Torts, and no argument is presented that rebuts claim as matter of law), 661 at 5-6 (1999) (business enterprise that claims exception for commercial or financial information under Gov't Code § 552.110(b) must show by specific factual evidence that release of requested information would cause that party substantial competitive harm).

We next note that the minutes, tape recordings, and agendas of a governmental body's public meetings are specifically made public by statute. *See* Gov't Code § 551.022. Information made specifically public by statute may not be withheld from disclosure by any exceptions to disclosure under the Public Information Act. *See, e.g.,* Open Records Decision Nos. 544 (1990), 378 (1983), 161 (1977), 146 (1976). Accordingly, the board must release the marked Board minutes to the requestor.

Section 552.105 excepts from disclosure information relating to:

- (1) the location of real or personal property for a public purpose prior to public announcement of the project; or
- (2) appraisals or purchase price of real or personal property for a public purpose prior to the formal award of contracts for the property.

Section 552.105 is designed to protect a governmental body's planning and negotiating position with regard to particular transactions. *See* Open Records Decision Nos. 564 (1990), 357 (1982), 310 (1982). Information excepted from disclosure under section 552.105 that pertains to such negotiations may be excepted so long as the transaction relating to those negotiations is not complete. *See* Open Records Decision Nos. 310 (1982), 265 (1981). A governmental body may withhold information "which, if released, would impair or tend to impair [its] 'planning and negotiating position in regard to particular transactions.'" Open Records Decision No. 357 at 3 (1982) (quoting Open Records Decision No. 222 (1979)). The question of whether specific information, if publicly released, would impair a governmental body's planning and negotiation position in regard to particular transactions is a question of fact. Accordingly, this office will accept a governmental body's good faith determination in this regard, unless the contrary is clearly shown as a matter of law. *See* Open Records Decision No. 564 (1990).

You advise us that the information at issue pertains to the purchase price of real property that the board intends to purchase. You contend that the release of the requested information could adversely affect the purchase price of such property. Because this exception extends

to "information relating to" the location, appraisals, and purchase price of property, it may protect more than a specific appraisal report prepared for a specific piece of property. ORD 564 at 2. For example, we have concluded that appraisal information about parcels of land acquired in advance of others to be acquired for the same project could be withheld where this information would harm the governmental body's negotiating position with respect to the remaining parcels. *Id.* We have also held that section 552.105 applies to leases as well as purchases of real estate. Open Records Decision No. 348 (982). After examining your arguments and the information you have submitted, we find that section 552.105 is applicable in this instance to most of the submitted information. The board may withhold the information that we have marked under section 552.105.

You claim that section 552.131 of the Government Code excepts the remaining submitted information from public disclosure. Section 552.131 excepts from public disclosure a business prospect's trade secret or commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm if the information relates to economic development negotiations involving a governmental body and a business prospect that the governmental body seeks to have locate, stay, or expand in or near the governmental body's territory. Gov't Code § 552.131(a). You have provided no specific factual evidence that disclosure of the information at issue would cause the board substantial competitive harm. Therefore, we find that section 552.131 is inapplicable to the remainder of the submitted information, and it must be released to the requestor.

In summary, the board may withhold the information we have marked under section 552.105. The remainder of the submitted information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records;


2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/seg

Ref: ID# 162179

Enc. Submitted documents

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